

ADOPTION TAX CREDIT

2021 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Rex P. Shipp

Senate Sponsor: Jacob L. Anderegg

LONG TITLE

General Description:

This bill enacts individual income tax credits for adoption expenses.

Highlighted Provisions:

This bill:

- ▶ defines terms;
 - ▶ enacts a nonrefundable and a refundable individual income tax credit for expenses related to the adoption of a child for which eligibility depends on the individual's income;
 - ▶ provides for apportionment of a tax credit for adoption expenses;
 - ▶ requires the Department of Workforce Services to certify certain information about an individual's qualification for an adoption expense tax credit and to share that information with the State Tax Commission;
 - ▶ repeals an individual income tax credit for adoption of a child with special needs;
- and
- ▶ makes technical and conforming changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

This bill provides retrospective operation.

Utah Code Sections Affected:



28 AMENDS:

29 [59-10-137](#), as last amended by Laws of Utah 2019, Chapters 247 and 465

30 [59-10-1002.2](#), as last amended by Laws of Utah 2016, Chapter 263

31 [62A-4a-607](#), as last amended by Laws of Utah 2017, Chapter 148

32 ENACTS:

33 [35A-1-111](#), Utah Code Annotated 1953

34 [59-10-1042](#), Utah Code Annotated 1953

35 [59-10-1102.1](#), Utah Code Annotated 1953

36 [59-10-1113](#), Utah Code Annotated 1953

37 REPEALS:

38 [59-10-1104](#), as last amended by Laws of Utah 2013, Chapter 414



40 *Be it enacted by the Legislature of the state of Utah:*

41 Section 1. Section [35A-1-111](#) is enacted to read:

42 **[35A-1-111](#). Certification for adoption tax credit.**

43 (1) An individual who seeks to claim a tax credit under Section [59-10-1042](#) or
44 [59-10-1113](#) shall apply to the department for a certification that the individual did not receive
45 any state or federal assistance described in Subsection [59-10-1042](#)(1)(e)(ii)(A), (B), (C), or (D)
46 during the taxable year in which the adoption is finalized.

47 (2) An individual who applies for a certification under this section shall sign an
48 information release authorizing the department to disclose the individual's name and
49 identifying information to the State Tax Commission in accordance with Subsection (5).

50 (3) The department shall issue the certification on a form approved by the State Tax
51 Commission.

52 (4) An individual who receives a certification under this section shall retain the
53 certification for the same time period a person is required to keep books and records under
54 Section [59-1-1406](#).

55 (5) The department shall provide the State Tax Commission with an electronic report
56 stating the name and identifying information of each individual to whom the department issued
57 a certification under this section.

58 Section 2. Section [59-10-137](#) is amended to read:

59 **59-10-137. Review of credits allowed under this chapter.**

60 (1) As used in this section, "committee" means the Revenue and Taxation Interim
61 Committee.

62 (2) (a) The committee shall review the tax credits described in this chapter as provided
63 in Subsection (3) and make recommendations concerning whether the tax credits should be
64 continued, modified, or repealed.

65 (b) In conducting the review required under Subsection (2)(a), the committee shall:

66 (i) schedule time on at least one committee agenda to conduct the review;

67 (ii) invite state agencies, individuals, and organizations concerned with the tax credit
68 under review to provide testimony;

69 (iii) (A) invite the Governor's Office of Economic Development to present a summary
70 and analysis of the information for each tax credit regarding which the Governor's Office of
71 Economic Development is required to make a report under this chapter; and

72 (B) invite the Office of the Legislative Fiscal Analyst to present a summary and
73 analysis of the information for each tax credit regarding which the Office of the Legislative
74 Fiscal Analyst is required to make a report under this chapter;

75 (iv) ensure that the committee's recommendations described in this section include an
76 evaluation of:

77 (A) the cost of the tax credit to the state;

78 (B) the purpose and effectiveness of the tax credit; and

79 (C) the extent to which the state benefits from the tax credit; and

80 (v) undertake other review efforts as determined by the committee chairs or as
81 otherwise required by law.

82 (3) (a) On or before November 30, 2017, and every three years after 2017, the
83 committee shall conduct the review required under Subsection (2) of the tax credits allowed
84 under the following sections:

85 (i) Section 59-10-1004;

86 (ii) Section 59-10-1010;

87 (iii) Section 59-10-1015;

88 (iv) Section 59-10-1025;

89 (v) Section 59-10-1027;

- 90 (vi) Section 59-10-1031;
- 91 (vii) Section 59-10-1032;
- 92 (viii) Section 59-10-1035;
- 93 [~~(ix) Section 59-10-1104;~~]
- 94 [~~(x)~~ (ix) Section 59-10-1105; and
- 95 [~~(xi)~~ (x) Section 59-10-1108.

96 (b) On or before November 30, 2018, and every three years after 2018, the committee
97 shall conduct the review required under Subsection (2) of the tax credits allowed under the
98 following sections:

- 99 (i) Section 59-10-1005;
- 100 (ii) Section 59-10-1006;
- 101 (iii) Section 59-10-1012;
- 102 (iv) Section 59-10-1022;
- 103 (v) Section 59-10-1023;
- 104 (vi) Section 59-10-1028;
- 105 (vii) Section 59-10-1034;
- 106 (viii) Section 59-10-1037;
- 107 (ix) Section 59-10-1107; and
- 108 (x) Section 59-10-1112.

109 (c) On or before November 30, 2019, and every three years after 2019, the committee
110 shall conduct the review required under Subsection (2) of the tax credits allowed under the
111 following sections:

- 112 (i) Section 59-10-1007;
- 113 (ii) Section 59-10-1014;
- 114 (iii) Section 59-10-1017;
- 115 (iv) Section 59-10-1018;
- 116 (v) Section 59-10-1019;
- 117 (vi) Section 59-10-1024;
- 118 (vii) Section 59-10-1029;
- 119 (viii) Section 59-10-1033;
- 120 (ix) Section 59-10-1036;

121 (x) Section 59-10-1106; and

122 (xi) Section 59-10-1111.

123 (d) (i) In addition to the reviews described in this Subsection (3), the committee shall
124 conduct a review of a tax credit described in this chapter that is enacted on or after January 1,
125 2017.

126 (ii) The committee shall complete a review described in this Subsection (3)(d) three
127 years after the effective date of the tax credit and every three years after the initial review date.

128 Section 3. Section 59-10-1002.2 is amended to read:

129 **59-10-1002.2. Apportionment of tax credits.**

130 (1) A nonresident individual or a part-year resident individual [~~that~~] who claims a tax
131 credit in accordance with Section 59-10-1017, 59-10-1018, 59-10-1019, 59-10-1022,
132 59-10-1023, 59-10-1024, [~~or~~] 59-10-1028, or 59-10-1042 may only claim an apportioned
133 amount of the tax credit equal to:

134 (a) for a nonresident individual, the product of:

135 (i) the state income tax percentage for the nonresident individual; and

136 (ii) the amount of the tax credit that the nonresident individual would have been
137 allowed to claim but for the apportionment requirements of this section; or

138 (b) for a part-year resident individual, the product of:

139 (i) the state income tax percentage for the part-year resident individual; and

140 (ii) the amount of the tax credit that the part-year resident individual would have been
141 allowed to claim but for the apportionment requirements of this section.

142 (2) A nonresident estate or trust that claims a tax credit in accordance with Section
143 59-10-1017, 59-10-1020, 59-10-1022, 59-10-1024, or 59-10-1028 may only claim an
144 apportioned amount of the tax credit equal to the product of:

145 (a) the state income tax percentage for the nonresident estate or trust; and

146 (b) the amount of the tax credit that the nonresident estate or trust would have been
147 allowed to claim but for the apportionment requirements of this section.

148 Section 4. Section 59-10-1042 is enacted to read:

149 **59-10-1042. Nonrefundable adoption tax credit.**

150 (1) As used in this section:

151 (a) "Adoption expense" means a reasonable and necessary adoption fee, court cost,

152 attorney fee, or other expense that is:

153 (i) directly related to, and for the primary purpose of, adoption of a qualifying child
154 through a domestic adoption;

155 (ii) not incurred in violation of federal or state law or in carrying out any surrogate
156 parenting arrangement; and

157 (iii) not paid or reimbursed by an employer or state assistance program.

158 (b) "Domestic adoption" means an adoption of a child who is a United States citizen or
159 a resident of the United States or its possessions before the adoption effort begins.

160 (c) (i) "Qualifying child" means an individual who is under the age of 18.

161 (ii) "Qualifying child" does not include an individual who is a child of the claimant's
162 spouse.

163 (d) "Qualifying claimant" means a claimant:

164 (i) whose adjusted gross income is:

165 (A) for a claimant who files a federal income tax return jointly with the claimant's
166 spouse, \$50,000 or more but less than \$100,000; or

167 (B) for a claimant who files a federal income tax return other than jointly, \$25,000 or
168 more but less than \$50,000;

169 (ii) who did not, and if the claimant is married, whose spouse did not, receive state or
170 federal assistance during the taxable year in which the adoption is finalized; and

171 (iii) who applies for and receives a certification described in Section [35A-1-111](#) from
172 the Department of Workforce Services.

173 (e) (i) "State or federal assistance" means public funds that are:

174 (A) expended for the benefit of an individual in need of financial, medical, food,
175 housing, or related assistance;

176 (B) means-tested; and

177 (C) provided by a state or federal government.

178 (ii) "State or federal assistance" includes:

179 (A) the Medicaid program, as defined in Section [26-18-2](#);

180 (B) the Employment Support Act described in Title 35A, Chapter 3, Employment
181 Support Act;

182 (C) the Children's Health Insurance Program created in Title 26, Chapter 40, Utah

183 Children's Health Insurance Act;

184 (D) the Supplemental Nutrition Assistance Program established in 7 U.S.C. Chapter
185 51;

186 (E) the Women, Infants, and Children Program established in 42 U.S.C. Sec. 1786;

187 (F) the federal Social Security Act; and

188 (G) housing assistance.

189 (iii) "State or federal assistance" does not include an income tax credit, subtraction, or
190 deduction.

191 (2) Except as provided in Section 59-10-1002.2, a qualifying claimant may claim, in
192 the taxable year in which the adoption is finalized, a nonrefundable tax credit equal to the
193 amount of the qualifying claimant's adoption expenses.

194 (3) A qualifying claimant may carry forward, to the next five taxable years, the amount
195 of any tax credit that exceeds the qualifying claimant's tax liability for the taxable year.

196 (4) A qualifying claimant may not claim a credit under this section to the extent that
197 the qualifying claimant claims a federal tax credit under 26 U.S.C. Sec. 23 for the same
198 adoption expense.

199 (5) A qualifying claimant who is married may claim a tax credit under this section only
200 if the qualifying claimant and the qualifying claimant's spouse file a joint federal income tax
201 return.

202 Section 5. Section **59-10-1102.1** is enacted to read:

203 **59-10-1102.1. Apportionment of tax credit.**

204 A nonresident individual or a part-year resident individual who claims the tax credit
205 described in Section 59-10-1113 may only claim an apportioned amount of the tax credit equal
206 to the product of:

207 (1) the state income tax percentage for the nonresident individual or the state income
208 tax percentage for the part-year resident individual; and

209 (2) the amount of the tax credit that the nonresident individual or the part-year resident
210 individual would have been allowed to claim but for the apportionment requirement of this
211 section.

212 Section 6. Section **59-10-1113** is enacted to read:

213 **59-10-1113. Refundable adoption income tax credit.**

214 (1) As used in this section:

215 (a) "Adoption expense" means a reasonable and necessary adoption fee, court cost,
216 attorney fee, or other expense that is:

217 (i) directly related to, and for the primary purpose of, adoption of a qualifying child
218 through a domestic adoption;

219 (ii) not incurred in violation of federal or state law or in carrying out a surrogate
220 parenting arrangement; and

221 (iii) not paid or reimbursed by an employer or state assistance program.

222 (b) "Domestic adoption" means an adoption of a child who is a United States citizen or
223 a resident of the United States or its possessions before the adoption effort begins.

224 (c) (i) "Qualifying child" means an individual who is under the age of 18.

225 (ii) "Qualifying child" does not include an individual who is a child of the claimant's
226 spouse.

227 (d) "Qualifying claimant" means a claimant:

228 (i) whose adjusted gross income is:

229 (A) for a claimant who files a federal income tax return jointly with the claimant's
230 spouse, less than \$50,000; or

231 (B) for a claimant who files a federal income tax return other than jointly, less than
232 \$25,000;

233 (ii) who did not, and if the claimant is married, whose spouse did not, receive state or
234 federal assistance during the taxable year in which the adoption is finalized; and

235 (iii) who applies for and receives a certification described in Section [35A-1-111](#) from
236 the Department of Workforce Services.

237 (e) "State or federal assistance" means the same as that term is defined in Section
238 [59-10-1042](#).

239 (2) (a) Subject to the other provisions of this Subsection (2), once an adoption is
240 finalized, a qualifying claimant is eligible to claim a refundable tax credit equal to the amount
241 of the qualifying claimant's adoption expenses.

242 (b) (i) A qualifying claimant who claims the tax credit described in Subsection (2)(a)
243 shall first claim the tax credit for the taxable year in which the adoption is finalized.

244 (ii) The amount of the tax credit for the taxable year in which the adoption is finalized

245 is limited to \$10,000.

246 (c) A qualifying claimant may claim an additional \$10,000 tax credit each taxable year
247 after the taxable year in which the adoption is finalized until the earlier of:

248 (i) the qualifying claimant has claimed the amount of the tax credit described in
249 Subsection (2)(a); or

250 (ii) the fourth taxable year after the qualifying claimant first claimed the tax credit
251 described in Subsection (2)(a).

252 (d) The provisions of Section [59-10-1102.1](#) apply to a nonresident individual or
253 part-year resident individual.

254 (3) A qualifying claimant may not claim a credit under this section to the extent that
255 the qualifying claimant claims a federal tax credit under 26 U.S.C. Sec. 23 for the same
256 adoption expense.

257 (4) A qualifying claimant who is married may claim a tax credit under this section only
258 if the qualifying claimant and the qualifying claimant's spouse file a joint federal income tax
259 return.

260 Section 7. Section **62A-4a-607** is amended to read:

261 **62A-4a-607. Promotion of adoption -- Agency notice to potential adoptive**
262 **parents.**

263 (1) (a) The division and all child-placing agencies licensed under this part shall
264 promote adoption when that is a possible and appropriate alternative for a child. Specifically,
265 in accordance with Section [62A-4a-205.6](#), the division shall actively promote the adoption of
266 all children in ~~[its]~~ the division's custody who have a final plan for termination of parental
267 rights pursuant to Section [78A-6-314](#) or a primary permanency plan of adoption.

268 (b) ~~[Beginning May 1, 2000, the]~~ The division may not place a child for adoption,
269 either temporarily or permanently, with any individual or individuals who do not qualify for
270 adoptive placement pursuant to the requirements of Sections [78B-6-117](#), [78B-6-102](#), and
271 [78B-6-137](#).

272 (2) The division shall obtain or conduct research of prior adoptive families to
273 determine what families may do to be successful with their adoptive children and shall make
274 this research available to potential adoptive parents.

275 (3) (a) A child-placing agency licensed under this part shall inform each potential

276 adoptive parent with whom [it] the child-placing agency is working that:

277 (i) children in the custody of the state are available for adoption;

278 (ii) Medicaid coverage for medical, dental, and mental health services may be available
279 for these children;

280 (iii) tax benefits, including the tax credit provided for in Section [~~59-10-1104~~]
281 59-10-1042 or 59-10-1113, and financial assistance may be available to defray the costs of
282 adopting these children;

283 (iv) training and ongoing support may be available to the adoptive parents of these
284 children; and

285 (v) information about individual children may be obtained by contacting the division's
286 offices or [its] the division's Internet site as explained by the child-placing agency.

287 (b) A child-placing agency shall:

288 (i) provide the notice required by Subsection (3)(a) at the earliest possible opportunity;
289 and

290 (ii) simultaneously distribute a copy of the pamphlet prepared by the division in
291 accordance with Subsection (3)(d).

292 (c) As a condition of licensure, the child-placing agency shall certify to the Office of
293 Licensing at the time of license renewal that it has complied with the provisions of this section.

294 (d) [~~Before July 1, 2000, the~~] The division shall:

295 (i) prepare a pamphlet that explains the information that is required by Subsection
296 (3)(a); and

297 (ii) regularly distribute copies of the pamphlet described in Subsection (3)(d)(i) to
298 child-placing agencies.

299 (e) The division shall respond to any inquiry made as a result of the notice provided in
300 Subsection (3)(a).

301 **Section 8. Repealer.**

302 This bill repeals:

303 Section 59-10-1104, **Tax credit for adoption of a child who has a special need.**

304 **Section 9. Retrospective operation.**

305 This bill has retrospective operation for a taxable year beginning on or after January 1,
306 2021.